

Appeal Decision

by ``redacted`` MRICS BA Hons, PG Dip Surv

an Appointed Person under the Community Infrastructure Levy Regulations 2010 (as Amended)

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW
Email: ``redacted``

Appeal Ref: 1881844

Planning Permission Details: ``redacted`` **granted** ``redacted``

Location: ``redacted``

Development: Change of use and external alterations to convert a redundant office building into 2no. dwellings.

Decision

I confirm that the Community Infrastructure Levy (CIL) charge stated in the Liability Notice issued on ``redacted`` in the sum of £``redacted`` (``redacted``) is not excessive and hereby dismiss this appeal.

Reasons

1. I have considered all of the submissions made by ``redacted`` of ``redacted`` (the appellant) and ``redacted``, the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

- a. The Decision Notice issued by ``redacted`` on ``redacted``.
- b. CIL Liability Notice ``redacted`` issued by the CA on ``redacted``.
- c. The Chargeable Amount Regulation 113 review decision issued by the CA on ``redacted``.
- d. The request for a Regulation 114 appeal made by the appellant on the ``redacted`` along with the supporting documents and appeal form submitted on ``redacted``.
- e. The CA's representations to the Regulation 114 Appeal dated ``redacted``.

- f. The appellant's comments received in response to the CA's representations received on ""redacted"".

Background

2. Planning permission ""redacted"" was granted on ""redacted"" and permitted the "Change of use and external alterations to convert a redundant office building into 2no. dwellings".

3. On the same day, CIL Liability Notice ""redacted"" was issued stating the CIL liability to be £""redacted"" (""redacted""). This chargeable amount is based upon a chargeable area of ""redacted"" square metres (sq. m.) chargeable at the C3 Residential Non SHR rate of £""redacted"" per sq. m. Indexation of ""redacted"" has been adopted for the charging year and ""redacted"" for the permission year.

4. I understand the appellant requested the CA conduct a Regulation 113 Review of the Chargeable Amount on the ""redacted"", though I have not been provided with a copy of this request.

5. The CA issued their Regulation 113 – Review of Chargeable Amount decision on ""redacted"" confirming the CIL liability in the sum of £""redacted"".

6. The appellant submitted a Regulation 114 (Chargeable Amount Appeal) to the Valuation Office Agency on the ""redacted"". The appellant opines that the CIL liability in this case should be nil as she considers that the existing building was in continuous lawful use for the required period during the relevant three year period. The appellant has provided a statutory declaration, photographs, and maintenance invoices to support her position. The appellant also considers that the planning consultant who acted on behalf of ""redacted"" erred when completing the CIL liability form having copied information from an earlier ""redacted"" planning application (""redacted") and stated the existing building to have been "a redundant office building" and vacant at the time of completing the form. However, the appellant advises he did not verify the building's use with the property owner nor visit the property and this statement was not supplied nor authorised by the appellant.

7. The appellant advises that the ground floor of the building was used for the storage of construction materials and states this use is documented from ""redacted"" onwards. The appellant advises the first floor was used as an office from ""redacted"". The appellant opines that these uses were active for more than six months prior to the grant of planning permission on ""redacted"" and as such qualify for an "in-use" credit under Regulation 40.

8. The appellant has provided various documents in support of the in-use criteria having been met. These include:

- An email dated ""redacted"" from ""redacted"" of ""redacted"" in which he confirms that the status of the building and its use stated within the planning application documentation was drawn from the CIL liability form accompanying application ""redacted"" which stated that the building was last used in ""redacted"". He goes on to state if that were not the case, the appellant

would need to explain why the original form was incorrect and provide evidence to substantiate this.

- Four photographs showing the ground floor being used for storage (one dated “redacted” the others undated but described as “Photographs taken at different times during “redacted” part of ground floor” and Ground floor storage (“redacted”). Two photographs showing office furniture present on the first floor described as having been taken “around “redacted”/“redacted”.”
- A statutory declaration provided by the appellant dated “redacted”. This declaration states the appellant took ownership of the property in “redacted” and began using the ground floor for storage around “redacted” and the first floor as an office from around “redacted”. The appellant states business rates and utilities were paid during this time. In addition, the appellant asserts that the planning consultant did not consult her nor show her the documentation stating the building to have been vacant since “redacted” prior to its submission. The appellant asserts “that the property met the “in-use” test for the purposes of Regulation 40 (11) of the Community Infrastructure Levy Regulations 2010 (as amended) and that the information previously submitted in error does not reflect the factual use of the property during the relevant period.”
- Invoices relating to maintenance carried out at the property. An invoice dated “redacted”, relating to the unblocking a drain at the property, an invoice dated “redacted”, for the installation a new lock to the side door and an invoice dated “redacted” for fixing a leaking pipe in the flat roof.

9. The CA are of the view that the CIL liability in this case should be £“redacted” and disagree that the appellant has demonstrated the existing building was in a lawful use for a continuous period of at least six months within the three years prior to the date planning permission was granted and as such do not consider the area of the existing buildings can be offset under Regulation 40 (11).

Decision and Reasoning

10. It is clear a disagreement has arisen in respect of the application of Schedule 1 Regulations 40 of the CIL Regulations 2010 (as amended) within which, a calculation of the **net** chargeable area of a development, provides for the deduction of the gross internal area of an ‘in use building’ that is to be retained as part of the chargeable development.

11. No issue has been raised around the gross internal area (GIA) of the chargeable development, the GIA of the existing building, the charging rate applied nor the indexation adopted. It is the value of A, “the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6):” as defined in Schedule 1, Part 1 1. (4) of the Community Infrastructure Levy Regulations 2010 (as amended) that is at the heart of this appeal.

12. Subparagraph (6) of Schedule 1, Part1 1. States; “The value of A must be calculated by applying the following formula—

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

where—

G = the gross internal area of the chargeable development;

GR = the gross internal area of the part of the chargeable development chargeable at rate R;

KR = the aggregate of the gross internal areas of the following—

(i) retained parts of in-use buildings; and

(ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;”

13. Schedule 1 of the CIL Regulations 2010 (as amended) (10) provides that an ‘in-use building’ “means a building which - (i) is a relevant building, and (ii) contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development”.

14. A relevant building is defined as “a building which is situated on the relevant land on the day planning permission first permits the chargeable development.”

15. Schedule 1 (8) states that; “where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building”.

16. Both parties agree the building to be a relevant building and also the relevant period during which at least six months continuous use must be demonstrated, that being between the “redacted” and the “redacted”. The disagreement centres around whether the buildings were in a lawful use.

17. The CIL regulations do not provide a definition of ‘in lawful use’ but in my opinion, a reasonable interpretation must mean that there are two criteria that need to be satisfied, firstly whether there has been an actual use of the existing building for the requisite six month period and secondly whether that use was lawful.

18. I have reviewed all of the evidence submitted by both parties in relation to this issue and I consider that in this case; there is insufficient information or information of sufficient quality to prove that the building has been in lawful use for a continuous period of at least six months within the period of three years up to the “redacted”.

19. The appellant has provided evidence that demonstrates use of the ground floor of the property for storage from “redacted”, that being the date of the dated photograph. Another three photos are provided but these are undated and are described as being taken at different times in “redacted” and one in “redacted”. This along with the appellant’s statutory declaration may suggest a use for a

continuous period of six months within the relevant period, though the supporting evidence is extremely limited representing only snapshots of undated periods of use.

20. Both parties agree that prior to the grant of the subject planning permission, the subject building's lawful use was as offices. Office use falls under Class E - Commercial, Business and Service of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. The use of the building for the storage of construction materials falls under Class B8 Storage and Distribution. Planning permission is required for a change of use from Class E to Class B8. As the subject did not have such permission, its use as storage was not lawful.

21. The appellant has provided evidence showing the first floor to have been in use as an office which would be considered a lawful use under Class E. However, the evidence provided relating to the office use is extremely limited amounting to two undated photographs said to have been taken around ``redacted``/``redacted`` which throws doubt upon whether the six month required period has been met. The maintenance invoices provided only show repairs have been carried out at the property they do not evidence the building having been used as an office. Nor does the payment of business rates and utilities.

22. The CA have highlighted the case of Hourhope Ltd V Shropshire Council [2015] that confirmed lawful use for CIL purposes means actual, active use. An office building is one in which you would expect evidence of "active use." I do not consider two photographs showing unoccupied desks enough to evidence active use as offices for a continuous six month period.

23. Whilst I note the appellant states within her statutory declaration that she began using the first floor as an office around ``redacted``, in the absence of further evidence it seems unlikely that the primary use of the building was as an office. The appellant states that a shipping container was placed in the yard in ``redacted``/``redacted`` to store materials and the ground floor of the building was used from ``redacted`` for the storage of materials and equipment relating to the appellant's business, that being property development. The appellant's business is not primarily one in which office based administration work is undertaken. The use of the first floor as an office was supporting the primary use of the building which was storage of construction materials and equipment related to the development business.

24. Within the appellant's comments submitted in response to the CA's representations, it is opined that "storage use is lawful use", however, as the subject did not have the requisite planning permission, its use for storage in planning terms was not lawful and as such the property cannot be considered to have been "in-use" and its gross internal area cannot be offset.

25. After consideration of all of the evidence before me, I do not consider there to be sufficient information or information of sufficient quality for me to determine that the property was in continuous lawful use for at least six months during the relevant period. As such I dismiss this appeal and confirm the chargeable amount at £``redacted`` (``redacted``).

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RICS Registered Valuer

Valuation Office Agency

06 February 2026